



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

VALLEY REGIONAL OFFICE

P.O. Box 3000, Harrisonburg, Virginia 22801

(540) 574-7800 Fax (540) 574-7878

Located at 4411 Early Road, Harrisonburg, VA

www.deq.virginia.gov

Matthew J. Strickler
Secretary of Natural Resources

David K. Paylor
Director

Amy Thatcher Owens
Regional Director

**STATE WATER CONTROL BOARD
ENFORCEMENT ACTION - ORDER BY CONSENT
ISSUED TO
PM Properties, Inc.
FOR
Whiting Rockbridge Oil Bulk Plant
Facility ID No. 602336**

SECTION A: Purpose

This is a Consent Order issued under the authority of Va. Code § 62.1-44.34:20, between the State Water Control Board and PM Properties, Inc. for the purpose of resolving certain violations of the State Water Control Law and the applicable regulations

SECTION B: Definitions

Unless the context indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "Aboveground storage tank" or "AST" means any one or combination of tanks, including pipes, used to contain an accumulation of oil at atmospheric pressure, and the volume of which, including the volume of the pipes, is more than ninety percent above the surface of the ground. This term does not include line pipe and breakout tanks of an interstate pipeline regulated under the Hazardous Liquid Pipeline Safety Act of 1979 or the Natural Gas Pipeline Safety Act of 1968, as amended.
2. "Board" means the State Water Control Board, a permanent citizens' board of the Commonwealth of Virginia, as described in Va. Code §§ 10.1-1184 and 62.1-44.7.

3. "Containment and cleanup" means abatement, containment, removal and disposal of oil and, to the extent possible, the restoration of the environment to its existing state prior to an oil discharge.
4. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia, as described in Va. Code § 10.1-1183.
5. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.
6. "Discharge" means any spilling, leaking, pumping, pouring, emitting, emptying or dumping.
7. "Facility" means the Whiting Oil Bulk Plant VA0145 located at 1157 North Lee Highway in Rockbridge County, Virginia.
8. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.
9. "Oil" means oil of any kind and in any form, including, but not limited to, petroleum and petroleum by-products, fuel oil, lubricating oils, sludge, oil refuse, oil mixed with other wastes, crude oils and all other liquid hydrocarbons regardless of specific gravity. *See* Va. Code §62.1-44.34:14.
10. "Operator" means any person who owns, operates, charters, rents or otherwise exercises control over or responsibility for a facility or a vehicle or vessel.
11. "Order" means this document, also known as a "Consent Order" or "Order by Consent," a type of Special Order under the State Water Control Law.
12. "Person" means any firm, corporation, association or partnership, one or more individuals, or any governmental unit or agency thereof.
13. "PM Properties" means PM Properties, Inc., a corporation authorized to do business in Virginia, and its affiliates, partners, and subsidiaries. PM Properties is a "person" within the meaning of Va. Code § 62.1-44.3. In addition, PM Properties is a wholly owned business unit of CrossAmerica Partners LP.
14. "State Water Control Law" means Chapter 3.1 (§ 62.1-44.2 *et seq.*) of Title 62.1 of the Va. Code. Article 11 (Va. Code §§ 62.1-44.34:14 through 62.1-44.34:23) of the State Water Control Law addresses discharge of oil into waters.
15. "State waters" means all water, on the surface and under the ground, wholly or partially within or bordering the Commonwealth or within its jurisdiction, including wetlands. Va. Code § 62.1-44.3.

16. “Va. Code” means the Code of Virginia (1950), as amended.

17. “VAC” means the Virginia Administrative Code.

SECTION C: Findings of Fact and Conclusions of Law

1. PM Properties is a person and operator of six ASTs located at the Facility.
2. On May 5, 2018, DEQ received notification from a consultant to PM Properties of a confirmed discharge of petroleum at the Facility. According to the notification, a faulty pressure regulator valve on the piping from a 10,000 AST system discharged an unknown volume of diesel fuel.
3. On May 9, 2018, DEQ staff conducted an inspection and records review at the Facility and noted the following:

- a. DEQ staff observed diesel fuel present on the soil and gravel beneath the above ground transfer piping from a 10,000 gallon AST.

Va. Code § 62.1-44.34:18 states that: “The discharge of oil into or upon state waters, lands, or storm drain systems within the Commonwealth is prohibited.”

- b. At the time of inspection and upon request, DEQ was not provided the Facility’s Oil Discharge Contingency Plan (ODCP).

Va. Code § 62.1-44.34:15.A states that: “No operator shall cause or permit the operation of a facility in the Commonwealth unless an oil discharge contingency plan applicable to the facility has been filed with and approved by the Board.”

- c. At the time of inspection and upon request, DEQ was not provided with documentation demonstrating financial responsibility by PM Properties, Inc. for containment and cleanup at the Facility.

Va. Code § 62.1-44.34:16.D states in part that: “Operators of facilities shall demonstrate financial responsibility based on the total storage capacity of all facilities operated within the Commonwealth.”

- d. At the time of inspection and upon request, complete documentation was not provided to demonstrate that safe fill and shutdown procedures are instituted.

9 VAC 25-91-130.B.3.a states that: “Each operator shall institute safe fill, shutdown, and transfer procedures, or equivalent measures approved by the board, that will ensure that spills resulting from tank overfills or other product transfer operations do not occur. Written safe fill, shutdown, and transfer procedures shall be maintained by the operator for use by the facility personnel.”

- e. At the time of inspection and upon request, complete documentation was not provided to demonstrate that AST gauges are calibrated.

9 VAC 25-91-130.B.3.d states that: "All ASTs shall be equipped with a gauge that is readily visible and indicates the level of oil or quantity of oil in the tank. These gauges shall be calibrated annually."

- f. At the time of inspection and upon request, complete documentation was not provided to demonstrate that pressure testing was performed as required.

9 VAC 25-91-130.B.4 states that: "All pipes shall be pressure tested as specified in this subsection or using an equivalent method or measure approved by the board at intervals not to exceed five years."

- g. At the time of inspection and upon request, complete documentation was not provided to demonstrate that visual daily and weekly inspections were performed.

9 VAC 25-91-130B.5.a states that: "The operator or a duly authorized representative shall conduct a daily visual inspection for each day in which normal operation occurs, but no less frequently than once every 14 days in the areas of the facility where this chapter applies. The facility person conducting the inspection shall document completion of this inspection by making and signing an appropriate notification in the facility records."

9 VAC 25-91-130.B.5.b states that: "The operator or a duly authorized representative shall conduct a weekly inspection each week in which normal operation occurs, but no less frequently than once every 14 days, of the facility in the areas where this chapter applies, using a checklist that contains at least the items found in subdivision 5c of this subsection. This weekly checklist shall be maintained at the facility and provided to the board upon request."

- h. At the time of inspection and upon request, complete documentation was not provided to demonstrate the institution of a comprehensive personnel training program and required training of facility personnel

9 VAC 25-91-130.B.6.a states that: "Each facility operator shall establish a training program for those facility personnel conducting the daily visual and weekly inspections of the facility. Facility records shall contain the basic information and procedures required by subdivision 6c of this subsection."

9 VAC 25-91-130.B.6.d states that: "The operator of a facility shall train facility personnel upon any changes to the contents of the initial training program or every three years and shall document this training in the facility records."

- i. At the time of inspection and upon request, complete documentation was not provided to demonstrate the operation of a system for leak detection

9 VAC 25-91-130.B states that: "The operator shall operate, maintain, monitor, and keep records of the system established for early detection of a discharge to groundwater (i.e. a method of leak detection) as required by 9 VAC 25-91-170.A.18 and contained in the facility's approved ODCP. These activities shall be inspected and approved by the board."

4. On May 9, 2018, DEQ issued correspondence to PM Properties requesting an investigation of the source, extent, and risk posed by the petroleum release and requested the submittal of a Limited Initial Abatement - Site Characterization Report (SCR).
5. On May 23, 2018, DEQ issued NOV No. 2018-VRO-0006 to PM Properties for the violations listed in Item 3 above.
6. On May 30, 2018, DEQ staff issued a Formal Inspection Notification Letter (FINL) to PM Properties providing advance notice of an AST compliance inspection and records review to be conducted by DEQ at the Facility in mid-June, 2018.
7. On June 18, 2018, DEQ conducted a formal inspection and records review, observed that the Facility continued to be in operation, and noted that the deficiencies observed during the May 9, 2018 site inspection and outlined in the May 23, 2018 NOV remained unresolved. In addition, DEQ staff noted significant visible surface staining within the secondary containment structure around AST #5. DEQ staff requested that containment and cleanup activities at this second location be included in the previously requested SCR.
8. On August 28, 2018, PM Properties submitted to DEQ the required SCR describing containment and cleanup activities performed at the Facility in August 2018. The containment and cleanup included the removal of 42.7 tons of petroleum impacted material
9. On October 24, 2018, PM Properties advised that the Facility had closed and had ceased dispensing fuel. On October 30, 2018 DEQ staff visually confirmed that the Facility was no longer in operation.
10. On December 6, 2018, DEQ notified PM Properties that based on review of the SCR no further investigation or containment and cleanup was required, and the petroleum discharge case was closed.
11. On April 20, 2019 PM Properties submitted material manifests to DEQ documenting the removal of all remaining product from all the ASTs and associated piping to the loading rack and retail dispensers.
12. Based on the results of May 9, 2018 and June 18, 2018 inspections and the documentation submitted on August 28, 2018, the State Water Control Board concludes that PM Properties has violated Va. Code § 62.1-44.34:18, § 62.1-44.34:15, § 62.1-44:16,

9 VAC 25-91-130, and 9 VAC 25-91-150, as described in paragraphs C(3) through C(7), above.

SECTION D: Agreement and Order

Accordingly, by virtue of the authority granted it in Va. Code § 62.1-44.34:20, the Board orders PM Properties, and PM Properties agrees to pay a civil charge of \$16,274.75 within 30 days of the effective date of the Order in settlement of the violations cited in this Order.

Payment shall be made by check, certified check, money order or cashier's check payable to the "Treasurer of Virginia," and delivered to:

Receipts Control
Department of Environmental Quality
Post Office Box 1104
Richmond, Virginia 23218

PM Properties shall include its Federal Employer Identification Number (FEIN) with the civil charge payment and shall indicate that the payment is being made in accordance with the requirements of this Order for deposit into the Virginia Petroleum Storage Tank Fund (VPSTF). If the Department has to refer collection of moneys due under this Order to the Department of Law, PM Properties shall be liable for attorneys' fees of 30% of the amount outstanding.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend this Order with the consent of PM Properties for good cause shown by PM Properties, or on its own motion pursuant to the Administrative Process Act, Va. Code § 2.2-4000 *et seq.*, after notice and opportunity to be heard.
2. This Order addresses and resolves only those violations specifically identified in Section C of this Order and in NOV No. 2018-VRO-0006 dated May 23, 2018. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility; or (3) taking subsequent action to enforce the Order.
3. For purposes of this Order and subsequent actions with respect to this Order only, PM Properties admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.
4. PM Properties consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order

5. PM Properties declares it has received fair and due process under the Administrative Process Act and the State Water Control Law and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to modify, rewrite, amend, or enforce this Order.
6. Failure by PM Properties to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. PM Properties shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other unforeseeable circumstances beyond its control and not due to a lack of good faith or diligence on its part. PM Properties shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. PM Properties shall notify the DEQ Regional Director verbally within 24 hours and in writing within three business days when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:
 - a. the reasons for the delay or noncompliance;
 - b. the projected duration of any such delay or noncompliance;
 - c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
 - d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director verbally within 24 hours and in writing within three business days, of learning of any condition above, which the parties intend to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto and any successors in interest, designees and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and PM Properties.

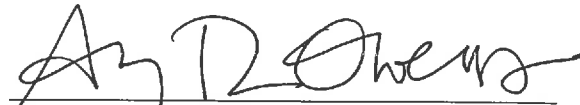
11. This Order shall continue in effect until:

- a. the Director or his designee terminates the Order after PM Properties has completed all of the requirements of the Order;
- b. PM Properties petitions the Director or his designee to terminate the Order after it has completed all of the requirements of the Order and the Director or his designee approves the termination of the Order; or
- c. the Director or Board terminates the Order in his or its sole discretion upon 30 days' written notice to PM Properties.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve PM Properties from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

12. Any plans, reports, schedules or specifications attached hereto or submitted by PM Properties and approved by the Department pursuant to this Order are incorporated into this Order. Any non-compliance with such approved documents shall be considered a violation of this Order.
13. The undersigned representative of PM Properties certifies that he or she is a responsible official authorized to enter into the terms and conditions of this Order and to execute and legally bind PM Properties to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of PM Properties.
14. This Order constitutes the entire agreement and understanding of the parties concerning settlement of the violations identified in Section C of this Order, and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this Order.
15. By its signature below, PM Properties voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 26th day of July, 2019



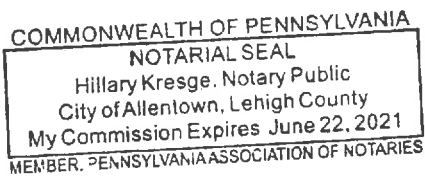
Amy T. Owens, Regional Director
Department of Environmental Quality

PM Properties, Inc. voluntarily agrees to the issuance of this Order.

Date: 5/23/19 By: [Signature],
Michael Federer Senior Director Legal/Corp. Secretary
PM Properties, Inc.

Commonwealth of Pennsylvania
City/County of Lehigh

The foregoing document was signed and acknowledged before me this 23rd day of
May, 20 19, by Michael Federer who is
Senior Director Legal of PM Properties, Inc., on behalf of the corporation.



[Signature]
Notary Public

Registration No.

My commission expires: June 22, 2021

Notary seal: